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Transitional Justice and National Reconciliation in Burundi.

Implementation of the Arusha Peace and Reconciliation Agreement for Burundi (signed in 2000).

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To Ntawundora Bernard:

"*Ubugabo burihabwa*" - ("We create our own dignity")

To Simbarakiye Regine:

"*Abaramvye barabona*" - ("Those who live long, experience hardships")

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1 Introduction

In this chapter I will provide some background information for the transitional justice (TJ) process in Burundi. I will address why Burundi is a relevant actor in the Great Lakes Region, why its TJ process as well as development issues should be seen as regional problems and why they should receive more attention from the international community. Then I will introduce the research question. After that I will describe the socio-economic and political situation in Burundi in 2014 and 2015 as well as mention a non-judicial tradition from pre-colonial period that is widely accepted locally and could be used to repair relationships that have been seriously damaged by the last 50 years of atrocities and armed conflicts. After that, I will provide the structure for this thesis, and finish this chapter with methodology clarification.

1.1. Why do we need to think about Burundi at all?

The Great Lakes region consists of several countries (Rwanda, Democratic Republic of Congo and Tanzania to mention the closest neighbors to Burundi) that by 2015 have each managed to establish a fragile peace, each in a different way. Yet, they are connected and should one fall back into a serious armed conflict, will all of them be impacted, if not militarily, then by refugee flows and economic instability.

The other reason for focusing on Burundi is that during the last 5 decades, Burundi has been traumatised by two genocides and countless massacres, yet those tragedies have not received much international attention. When people talk about TJ, almost everyone can re-call the atrocities in Rwanda, the failure of the international community to interfere in time, the International Criminal Tribunal for Rwanda (ICTR) being mandated and the *gacaca* trials taking place all over Rwanda[1]. The second genocide in Burundi started, however, in

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**The validity of the used websites has been last checked on 11 May 2015. Websites are hyper-linked in the bibliography to the author of the article/report. Thus no separate links are provided there.*

October 1993, half a year before Rwanda's in April 1994, and was based on the same ethnic conflict between the Hutus and the Tutsis. The civil war caused the death of possibly up to 300 000 people[2].

Yet no tribunal has been set up to investigate those crimes. Burundi is not known to be either a success-story or a cautionary tale in the sphere of TJ. In addition to international politics, described very well by Kaufman, I consider the local political will to cooperate with the international community and ability to draw attention to the country's problems to be the biggest differences between received responses to atrocities in Rwanda and Burundi[3].

1.2. Research question

Year 2015 marks 15 years since the Arusha Peace and Reconciliation Agreement for Burundi (hereafter referred to as "Arusha Agreement") was signed in Tanzania in 2000 to bring an end to an ethnically motivated civil war. Burundi has been ethnically divided since the colonization and mass atrocities have been committed by both the Hutu and the Tutsi ethnic groups throughout the past 50 years to gain or maintain political dominance.

One apparent success of the implementation of Arusha Agreement is that there has been no armed conflict since 2008, so the country has managed to maintain "negative peace". Negative peace refers to the absence of an armed conflict[4], while positive peace is "the presence of justice"[5], which "encompasses social justice, the uprooting of systematic discrimination and a more equitable distribution of power and resources"[6]. Positive peace is

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[1] Detailed information about the related statistics can be found from websites for United Nations Department of Public Information (2014), and United Nations International Criminal Tribunal for Rwanda (2015).

[2] Different sources claim different numbers between 200 000 and 300 000, but there is no official record. The fact of "genocide" was determined by the International Commission of Inquiry in Burundi, set up based on the UN Security Council Resolution S/RES/1012 (1995).

[3] Kaufman (2009), pages 229-260

[4] Johan Galtung (1969) describes «structural violence" as negative peace with unjust and violent consequences, preventing people from fulfilling their potential.

[5] Cortright (2013) pages 6-7.

[6] Aroussi and Vandeginste (2013), page 197

a "long-term condition that must be facilitated for the future, through building trust and encouraging greater interaction between previously antagonistic parties"[7].

Another success with Arusha Agreement implementation would be the power-sharing section of the Agreement, leading to adoption of a Constitution in 2005 and organising two sets of relatively democratic elections in 2005 and 2010.

Arusha Agreement, however, entailed much more, like investigations into atrocities, truth-seeking, reconciliation efforts, respect for human rights and, not least, good governance, democracy and development issues, none of which have been receiving any considerable attention, and progress towards achieving positive peace has not been started. Arusha Agreement was supposed to be the basis for peace and development in Burundi.

I will analyse Arusha Agreement from the human rights, transitional justice and development angle to address *the research question*:

> In the light of Burundi's political and socio-economic realities in 2015, what are the achievements and shortcomings in the implementation of the Arusha Peace and Reconciliation Agreement for Burundi signed in August 2000, and how can the process of national reconciliation be moved forward?

Through my analysis I would like to establish what kind of approach could make the long-term and positive peace as well as real development in Burundi possible while serving the interests of ordinary Burundians, not only the elite. TJ perspective and expectations of a person who, for example, has lost all family members and grown up as an orphan, who cannot read or write, who has not received any psychological help for the traumas experienced, who owns no land nor other property and whose only source of information is the hearsay and "truth" of others on the street, can be different from a traditional academic view.

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[7] Phil Clark (2009), page 196

1.3. Background information

Some background information about the human rights situation in Burundi is relevant when discussing the implementation of Arusha Agreement and shortcomings of the TJ process in Burundi so far, as well as the direction this process is taking now.

1.3.1. Socio-economic situation in Burundi

Population in Burundi is 10,2 million with 81,81% living in multidimensional poverty[8]. Human Development Index (HDI) 2014 ranks Burundi to place 180 of 187[9]. 67.2% of the population is literate, meaning that those aged 15 and over can read and write[10]. 56% drop out of primary schools, and only 28% enroll secondary schools[11]. Access to electricity is available to 2% of the population (CIA), while 1,3% of population uses Internet[12]. Based on the number of mobile subscriptions, Burundi ranks place 143 of 144[13].

Burundi's economy is dependent on Official Development Assistance (ODA). Ca 50% of the budget is provided for by bilateral donors[14]. 40% of ODA to Burundi is cash grants, thus making corruption easy and tangible[15].

Global Competitiveness Report 2014/2015 ranks Burundi to place 139 of 144 countries[16]. Based on a thorough economic analysis on the use of ODA in Burundi, Bertelsmann *Stiftung's* (BTI) Burundi country report 2014 suggests that the Poverty Reduction Strategy Paper (PRSP) II from 2012 follows almost 100% the guidelines of the IMF and World Bank, in order to secure further external funding[17]. BTI adds:

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[8] United Nations Development Programme (UNDP): http://hdr.undp.org/en/countries/profiles/BDI

[9] Poverty and nourishment related statistics can be found from websites to the World Bank, World Food Program, United Nations Statistics Division, Food and Agriculture Organisation of the United Nations.

[10] Central Intelligence Agency (CIA) statistics

[11] UNDP (2014): HDI 2014

[12] The Global Competitiveness Report 2014–2015: Page 509

[13] The Global Competitiveness Report 2014–2015: Page 435

[14] Seger/United Nations Peacebuilding Commission (29.12.2014), page 3, and Development Initiatives (2014).

[15] ODA flows are depicted at http://devinit.org/wp-content/uploads/2013/09/Investments-to-End-Poverty-Chapter-10-Burundi.pdf

[16] The Global Competitiveness Report 2014–2015, page 13

[17] BTI (2014), page 39

> The capacity of the government for policy formulation is extremely limited. [...] Very substantial political and socioeconomic problems, and the pressing demands for short-term relief of the dire socioeconomic situation of the population, restrain the government's ability to pursue strategic long-term goals. [...] long-term goals are very often sidelined by short-term interests, particularly maintaining and extending the ruling elite's power[18].

UN Office in Burundi (BNUB) referred to the International Monetary Fund's (IMF) fifth review of Burundi's economic performance, when stating that the macroeconomic outlook due to "risks arising from election-related uncertainty, economic disruptions and violence, all of which could impact investment and growth", was regarded as challenging[19].

1.3.2. Political situation in Burundi

Fragile States Index Rankings 2014 give Burundi place 22 of 178[20]. Transparency International's Corruption Perceptions Index 2014 ranks Burundi to place 159 of 175[21]. The Global Competitiveness Report 2014/2015 provides different relevant ratings related to separation of powers and the rule of law[22].

When looking at the situation with civil and political rights, Freedom House classifies Burundi's regime in 2014 as "Partly Free"[23]. Amnesty International, Human Rights Watch, not to mention many smaller local, regional and international civil society organisations, as well as governments and embassies of the biggest donor countries for Burundi, have throughout 2014 and the beginning of 2015 expressed deep concerns about the increased violations of freedom of association and peaceful assembly in Burundi. Those actors have also addressed the related crack-down of the opposition, the civil society and independent journalists by the Government and *Imbonerakure*, the youth wing of the ruling party

[18] BTI (2014), page 30
[19] S/2015/36, page 10
[20] The Fund for Peace (2014)
[21] Transparency International (2015)
[22] The Global Competitiveness Report 2014–2015, pages 408-421
[23] "Partly Free countries are characterised by some restrictions on political rights and civil liberties, often in a context of corruption, weak rule of law, ethnic strife, or civil war" (Freedom House). Rwanda receives in contrast rating "Not Free". "A Not Free country is one where basic political rights are absent, and basic civil liberties are widely or systematically denied" (Freedom House)

CNDD-FDD, especially now that the elections are approaching in June 2015. Unlawful imprisonments without trials, disappearances, intimidation of the critical "voices", and politically motivated extrajudicial executions are just a few examples of the everyday life in Burundi[24].

The Special Rapporteur on the situation of human rights defenders, Michel Frost, has criticised, as a result of his visit of Burundi in November 2014, the "repeated threats against human rights defenders and journalists and recalled that a free and independent media capable of exposing abuses of power and corruption was essential to safeguard civil liberties, promote transparency and foster the broad participation of citizens in public life"[25]. BNUB reports on "no significant progress" in the fight against impunity as well as on slow progress "in building an independent, accessible and credible justice system"[26]. The situation can be summarised by "instabilities, institutional weaknesses and lack of human security"[27].

President of the Security Council described the political situation in Burundi in February 2015 as follows: "The Security Council expresses concern for restriction on freedom of expression and opinion, peaceful assembly and association, as well as continued threats against journalists and representatives of civil society. [...] The Security Council further expresses its concern about the insufficient progress on the fight against impunity [...]"[28].

Another descriptive feature for Burundi is the politicizing of public services and the ruling party persistently gaining control over the administration. "Although the constellation of the government is in line with the principles laid out in the constitution, the country is increasingly becoming a de facto one-party state"[29].

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[24] More in BTI (2014) report.
[25] S/2015/36, page 9
[26] S/2015/36, pages 8-9
[27] Taylor (2013/A) page 451
[28] S/PRST/2015/6, page 3
[29] BTI (2014), page 38

1.4. Social fabric and *Bushingantahe*

As per today, no healing after the genocides and the civil war(s) has started, yet both ethnic groups are daily intertwined, living next to each other in local communities. People need to find out the truth, they need someone to admit their guilt, they need to know what happened and why, they need to start repairing their "social fabric". A new generation of Burundians has grown up, many without parents, brothers, sisters, close relatives, friends, listening to the dinner conversations of adults, learning their subjective truths about the history and what had happened, and develop their perceptions about the people from the other ethnic group. As the genocides and massacres have been conducted to both ethnic groups, it is easy for political leaders to manipulate desperate, poor and often uneducated people for personal interests. Feeling of injustice is widespread and violence can be ignited very easily. The long-living practice of impunity only adds to the equation.

The long-standing principles and values that Burundi was governed by before the colonisation, when ethnicity and political power-games were not part of people's everyday lives, are gathered in a tradition called *Bushingantahe*. It has been used to settle local disputes justly by "the wise" in the communities, promoting dignity and forgiveness (for more information, see section 2.6.2). Discussion about how to make the possible TJ process more understandable as well as useful for the local population will be discussed in Chapter 4.

1.5. Structure of this thesis

The structure of the thesis is as follows:

Chapter 2 provides a literature overview of relevant scholars' standpoints regarding the peace agreements, power-sharing agreements, TJ terminology and identifies the main dilemmas when TJ mechanisms are chosen. Chapter 2 also identifies which views are relevant for this thesis as depending on a type of conflict, local conditions, history, timeframes, desired outcomes and methods of investigation, these topics should be addressed very differently. The lessons from other's experiences and academic opinions will be used to build a suitable TJ model for Burundi in Chapter 4.

Chapter 3 focuses on a thorough analysis of Arusha Agreement and the related peace agreements signed consequently. I will identify the human rights clauses in the agreements, TJ mechanisms and role division to implement the Agreement. The second part of the chapter provides an overview of what has happened until 2015 in the implementation of the Agreement, analyses the proposed TRC legislature in the light of Arusha Agreement and UN standpoints, and makes references to the models of TJ in neighbouring countries. The President of Burundi has now started to pursue TJ through TRC. I will look into why he does it now, how he has planned to do it and how does it fit into the general framework agreed to in Arusha Agreement in 2000.

Chapter 4 aims at suggesting a way forward for Burundi and TJ process based on successes and shortcomings of Arusha Agreement implementation until April 2015. As Burundi is basically only now starting with TJ, it is a good opportunity to make an educated suggestion for the country, especially considering that several neighboring countries have already tried different approaches with different success rates. I will also look into the traditional conflict resolution method in Burundi and see if its elements can be used to involve the population in the reconciliation process at a maximised level.

Chapter 5 will conclude the thesis by answering the research question based on the findings throughout the document.

1.6. Methodology

This thesis is a qualitative interdisciplinary research where the results of the empirical comparative legal analysis identifying a suitable TJ framework for Burundi are placed into socio-economic and political context of the country in question. In principle, a "law in context" analysis is used to inquire into how TJ process is perceived by the society and how the proposed recommendations would fit the local realities to serve the interests of ordinary people.

Focus of the analysis is on a peace agreement, signed in 2000 to end the long-lasting armed conflict and address the root-causes of that conflict, as well as on relevant legal framework and action plans adopted consequently both by the Government of the country in question

and the international community. The analysis provides also an overview of the achieved results in implementing the peace agreement, forming a baseline at the time of writing. This baseline is then used to build recommendations for future TJ processes and the peace agreement implementation, while considering the international law development as well as technological advancements over the last 15 years.

Socio-economic as well as political situation assessment in Burundi is empirical as it is based on data and statistics collected by reliable multinational actors and intergovernmental agencies and confirmed by statements of representatives of different UN agencies as well as local and international civil society organisations and media outlets.

Before beginning the analysis of the normative legal framework, I wanted to get an overview of the academic understanding for peace and TJ related terminology and dilemmas to formulate a framework with relevant definitions suitable for the context of this thesis (Chapter 2). I also wanted to learn about the TJ processes in Burundi's neighbouring countries, to build on their successes and failures in the recommendations section. The books and articles studied are enlisted under bibliography. While Burundi is not a very well-known TJ case, I found a few published relevant studies and collections of interviews with Burundians, the findings of which have been referred to in the thesis.

Arusha Agreement was signed in 2000 to end the civil war that started with genocide in 1993. My analysis of the TJ process in Burundi in Chapter 3 starts therefore also from 1993 as some minor direction-giving steps were taken before the conclusion of Arusha Agreement in 2000.

UN Security Council has followed the peace process in Burundi and TJ pursuit since 1993 and documented its viewpoints and recommendations in the resolutions, reports and guidelines. In addition to these, UN Security Council has also adopted general policies and definitions for fulfilling its mandate in different conflict areas. These have been valuable sources of information, in addition to Arusha Agreement and the following peace agreements with the rebel groups in 2003, 2006 and 2008, in assessing the TJ in Burundi

until today and making recommendations for the future. They are also enlisted under bibliography.

My research has been done following the requirement that methodology must be thorough, systematic, justifiable and reproducible. I have used inductive reasoning when reviewing the findings and "synthesizing results" with focus on reliability of sources, quality and relevance of data and "selecting and weighing materials based on hierarchy and authority as well as understanding of the social context and interpretation" [30].

Using the interdisciplinary approach for both analysis as well as recommendations' part of the thesis helps tailoring a universally accepted framework of TJ and peace-building to a local context in a meaningful way. Analysing academic, civil society as well as diplomatic and political sources and establishing their common ground in goals, findings and opinions has helped me to develop a credible baseline in 2015 that the future recommendations can be built on. I hope that this thesis be used, as proposed by Dobinson and Johns, as part of a larger research, leading to future policy or strategy development and eventual change or reform in Burundi[31].

[30] McConville and Chui (2007), pages 32 and 40
[31] McConville and Chui (2007), page 20

2 Terminology and literature overview

There is a lot of literature available on TJ with its aims, means and related limitations and dilemmas. This chapter aims at identifying the definitions and elaborations that dominate the scholarly discussions, yet limit the scope covered to the concepts relevant for this thesis. The focus will be on power-sharing, TJ, reconciliation and Responsibility to Protect (R2P) as central topics discussed in Chapters 3 and 4 of the thesis. At the end of each section I will make a short reference to how the presented information relates to the situation in Burundi, as a preparation to analysis that follows.

2.1 Peace-agreements

Peace-agreements are signed to end armed conflicts and/or other states of emergency. As it is understandably difficult to get the military and political elite as well as guerillas around the negotiation table, the needs of different parties must be acknowledged so that the parties, at least in theory, have the hope that their expectations are seriously addressed. Often influential international actors and mediators are involved. Peace-agreements include an array of dilemmas, balancing between transition from the armed conflict to the rule of law and justice, human rights and structural reforms, reconciliation and accountability, just to name a few.

As the old and new elites, sometimes of military background, are in charge of modifying the national legislation to accommodate the contents of the peace agreements, the actual implementation of the agreed noble goals, commitments and declarations run the risk of never fully materializing, as seems to be the case with Arusha Agreement of 2000.

2.2 Power-sharing

Power-sharing has not been given a specific legal definition or scope. In practice, however, the power-sharing components are political, economic, military and/or territorial and often end up "guaranteeing representation, control and/or influence in the government, the army and the security sector, the national economy and resources or over a specific territory to

the signatories."[32] Even though power-sharing agreements can include commitments for different structural improvements and pledges to respect and promote international human rights, the latter are often just no-cost means to guarantee parties' real interests with "no consequences or sanctioning mechanisms for non-compliance" and to increase the external legitimacy of the peace process at the international level"[33].

Consociational power-sharing arrangements, studied in depth by Arend Lijphart, have four classic elements: "coalition government (between parties from different segments of society), proportionality (in the voting system and public sector), minority veto for areas of vital interest, and segmental group autonomy capable of enabling forms of self-government by groups over areas such as education"[34]. Burundi has such power-sharing agreement as will be discussed in the following chapters.

As power-sharing agreements often invest enormous power to former belligerents or former political enemies at all stages of politics, criticism is natural. Levitt writes, for example, that "in the case of democratically constituted governments, negotiating peace agreements with rebels, junta and warlords leads to an illegal peace"[35]. Cole notes that power-sharing governments should be temporary for the period of and purpose to restore democratic order, not rewards war criminals with political positions, and emphasises the necessity of vetting, meaning not allowing those bearing the greatest responsibility for the unrest to participate in established governments[36]. Power-sharing should, in any case, prevent recurrence of large-scale atrocities leading to such agreements in the first place.

Political power-sharing agreements with military leaders who have "very little democratic legitimacy" are very common among African countries[37]. Manirakiza explains that "By involving all the stakeholders in the negotiations of peace arrangements and thereby

[32] Aroussi and Vandeginste (2013), page 184
[33] Aroussi and Vandeginste (2013), page 190-193
[34] Bell (2013), page 205
[35] Levitt (2012), page 123
[36] Cole (2013), page 270
[37] Bell (2013), page 221

ensuring their representation in the government and other state institutions, post-conflict societies can establish the foundation for peace, rule of law, stability and development"[38]. Cole discusses how power-sharing satisfies the desire for peace more easily than the democratic will of the people, yet warns that the "continuation of this trend might well encourage incumbents to hijack electoral processes with the knowledge that any ensuing dispute will at worst result in a power-sharing deal"[39].

AU often supports the power-sharing-based peace arrangements (Kenya, Zimbabwe, Burundi, etc.) "for political expediency and necessity, instead of upholding the values of the rule of law and human rights that are articulated in its basic legal instruments"[40].

When discussing power-sharing in the Democratic Republic of Congo, Davis accepts that in some cases power-sharing might be the only way to end the violence, yet emphasises that functioning state institutions and justice system are prerequisites for TJ and power-sharing to have the expected effect, and that vetting procedure and exclusion of those most responsible for atrocities are essential in re-designing law enforcement and security forces[41].

Hansen describes similar trends in Kenya's power-sharing deal and cautions that should the internal power struggles take priority over achieving societal transformation and should the lack of political take prevail over enforcement of the power-sharing provisions, which often are manipulated by the elite and included in peace-agreements only as formalities, the real value of TJ process can be very limited[42].

For Burundi, Arusha Agreement regulates power-sharing in detail, providing a recipe for the new Constitution.

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[38] Manirakiza (2013), page 239
[39] Cole (2013), page 257
[40] Manirakiza(2013), page 243
[41] Davis (2013), page 301
[42] Hansen (2013), page 320-322

2.3 Transitional justice

Transitional justice (TJ) is a process to re-establish the rule of law in conflict and post-conflict societies. UN defines the rule of law as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards"[43]. In addition, UN defines TJ as comprising

> the full range of processes and mechanisms associated with a society as attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof[44].

By accommodating these norms and rules to a specific legal system, UN considers them to be more effective and suitable than to simply export/import ready-made models "which, all too often, reflect more the individual interests or experience of donors and assistance providers than they do the best interests or legal development needs of host countries"[45].

Teitel defines TJ as "a multidisciplinary field of research and practice linked to the fight against impunity and the broader domains of human rights and conflict resolution"[46]. Blackford describes TJ as reflecting "how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just or peaceful future"[47]. Clark, Kaufman and Nicolaidis argue convincingly that the term "transitional justice" should be replaced with "post-conflict reconstruction" as the goal of the "transition" is often unclear and the term "justice" can be too strongly emphasised over other long-term considerations[48].

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[43] S/2004/616, page 4
[44] S/2004/616, paragraph 8
[45] S/2004/616, paragraph 8
[46] Teitel (2000)
[47] Bickford (2004)
[48] Clark, Kaufman and Nicolaidis (2009), page 391

Hazan divides TJ into 4 phases:

> (1) The armed conflict or the repression phase [...] ;
> (2) The immediate post-conflict period (first 5 years), when the war-lords can [...] mobilise the media and networks loyal to them;
> (3) The medium term (from 5 to 20 years), when the society undergoing social and political reconstruction works out new points of reference [...];
> (4) The long-term, with the rise of a new generation much more receptive to the need to overcome old divisions[49].

Different TJ mechanisms facilitating either accountability, truth, reparations or reconciliation suit different phases.

As the analysis in Chapter 3 will demonstrate, for Burundi there is currently a slight overlap between finalizing the second and starting the third phase. There is also an additional risk that Burundi will fall back into phase 1, if the elections in June 2015 do not go as expected for the ruling party. Suggestions in Chapter 4 will, however, aim at keeping the country in phase three and plan long-term to reach phase 4.

2.4 Amnesties

Amnesty is often the central controversial topic in TJ literature as balance needs to be struck between restoring a sense of justice for the victims through trials, punishments and reparations from one side, and prioritizing development and reconciliation on the other. Freeman has conducted a detailed analysis on the topic of amnesties and for the purpose of this thesis, I use his definition:

> Amnesty is an extraordinary legal measure whose primary function is to remove the prospect and consequences of criminal liability for designated individuals or classes of persons in respect of designated types of offences irrespective of whether the persons concerned have been tried for such offences in a court of law[50].

International institutions are formally against amnesties. The UN Secretary General report (2004) states clearly that "United Nations-endorsed peace agreements can never promise

[49] Hazan (2006), page 28
[50] Freeman (2009), page 13

amnesties for genocide, war crimes, crimes against humanity or gross violations of human rights, and, where we are mandated to undertake executive or judicial functions, United Nations-operated facilities must scrupulously comply with international standards for human rights in the administration of justice"[51]. UN Secretary General report (2011) states that "The United Nations has strengthened the normative framework supporting transitional justice, including the right to justice, truth and guarantees of non-recurrence."[52]

Freeman describes UN's position as a legal opinion, not law, but emphasises that as a result of non-compliance, UN can refuse to witness an agreement with amnesty clause, to participate in the amnesty-related process, but most importantly discourage "donor engagement in the implementation of a broader peace-building program"[53].

Teitel introduces a concept of "humanity's law" where the interstate international law is shifting towards a human-centered law and politics combining civil and political rights with social and economic rights[54], and thus, in a way, re-defining the concept of rule of law. "Humanity law challenges the notion of any immunity from accountability; the acting political leadership is held responsible for its decisions concerning the use of force"[55].

The analysis in Chapter 3 will demonstrate in detail the use of amnesties in Burundi's TJ process so far. The conclusion by Vandeginste, Aroussi and Feyter that "power-sharing has become a vehicle of transitional justice [...] [which] easily leads to impunity even when it does not include blanket amnesties" describes Burundi's situation very well[56].

2.5 Reconciliation, healing and social transformation

Reconciliation is the central buzzword in TJ literature. It is often implied that it happens almost automatically after some mechanisms have been launched, be it then political

[51] S/2004/616, paragraph 8
[52] S/2011/634, paragraph 19
[53] Freeman (2009), page 91
[54] Teitel (2011), preface pages ix and x, and page 17
[55] Teitel (2011), page 120
[56] Aroussi, Feyter and Vandeginste (2013) page 181

power-sharing, truth commissions or some other choice. Unfortunately, traumatised communities lack the solidarity needed to transform and develop as relationships are broken and trust is lacking.

Buckley-Zistel refers to the process where a society moves from negative peace into positive peace and where cooperation and trust replace "tolerance in existence" as "social transformation"[57]. A similar thought is supported by Gasana who writes about the importance of healing the pain to avoid hopelessness, fear and frustration from taking over and concludes that the "ultimate common goal for peacebuilding and development interventions is therefore to transform broken or imbalanced relationships through healing, justice, education, empowerment, and social, economic and cultural integration processes"[58]. Clark takes it even one step further, saying that reconciliation aims at re-building relationships through a process of "re-humanising both survivors and perpetrators after violence" because perpetrators have often de-humanised the victims to have a justification for their action, losing a sense of humanity and empathy for the enemy identity.[59]

In Burundi, as described also by Taylor, establishing the common truth and acknowledging the atrocities are intertwined with reconciliation, and communities need to understand each other's sufferings, losses, and the "common experiences of victimisation"[60]. Clark also explains that forgiveness is distinct from reconciliation as the latter builds new relationships while "forgiveness requires only that a victim forego feelings of resentment and desire for direct revenge against the perpetrator"[61].

[57] Buckley-Zistel (2009), pages 139-140
[58] Gasana (2009), pages 157 and 159
[59] Clark (2009), pages 200-201
[60] Taylor (2013/A), page 458
[61] Clark (2009), page 202

2.5.1 *Bushingantahe*

Ingelære and Kohlhagen have researched thoroughly a traditional Burundian alternative non-judicial conflict resolution mechanism called *Bushingantahe*, referring to "an ideal, a set of virtues, constituting a social reference to righteousness, socialness, sagacity, self-control, responsibility, honor, discretion, equity, truthfulness, coherence and balance in speech, moral and economic independence and prosperity"[62]. According to historian Christine Deslaurier, the term *Bushingantahe*, covers the moral, cultural, social and legal dimensions of this institution and lacks any real equivalent, even in neighbouring countries[63].

Based on hundreds of interviews, Ingelære and Kohlhagen concluded that ordinary Burundians didn't associate the terms like "norm" or "law"

> with the ideas of justice, peace or equity, but rather with the ideas of constraint, arbitrariness or political power [...].[...] When asked about the competences of a good judge, however, people usually referred to moral integrity, presence or the ability to make people respect his decisions. [...] more than 90 percent of interviewees would refuse to have a case judged by a single judge[64].

These findings demonstrate how ordinary people understand social rules and how they evaluate the accomplishments of the national courts using for them understandable *Bushingantahe* principles.

UNDP has supported the project of identifying the *bashingatahe* and establishing the National Council of Bashingantahe in 2002, yet the ruling party CNDD-FDD is not supportive of their role because traditionally the precondition to be considered worthy of the position of *bashingantahe* was economic independence to avoid bias in decisions and the institution was dominated by urban Tutsi elites. In 2010, municipal law was changed by the ruling party terminating the role of *bashingantahe* as local mediators and conciliators.

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[62] Ingelære and Kohlhagen (2012), page 49. The men embodying the *bushingantahe* virtues and promoting these values in the community are called *bashingantahe* (or in singular *mushingantahe*).
[63] Deslaurier (2003)
[64] Ingelære and Kohlhagen (2012), page 50-51

In practice, however, people still widely turn to them in family and neighborhood disputes[65].

2.5.2 Truth-seeking

Security Council has defined truth commissions as "official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years. These bodies take a victim-centered approach and conclude their work with a final report of findings of fact and recommendations"[66]. In 2011 Security Council added that truth commissions "can signal a break with the past and assist in engendering trust and confidence in newly reconstituted justice and security institutions"[67]. "Truth commission can complement or replace criminal proceedings".[68]

Freeman describes a truth commission as "a genuine forum for truth-telling and as a means to map a post-conflict future", but remains critical as to its effect in real life, saying that the commissions "usually do not produce confessions of guilt from political and military leaders or powerful state officials. Those who bear greatest responsibility seem to bear least sense of shame: they have usually defended their actions as having been required by the national interest"[69] and concludes that without shaming reconciliation is impossible.

Despite its preliminary praise of the truth commissions and listing of many possible positive outcomes, the Security Council also noted possible fall-outs, caused for example by "weak civil society, political instability, victim and witness fears about testifying, a weak or corrupt justice system, insufficient time to carry out investigations, lack of public support and inadequate funding. Truth commissions are invariably compromised if appointed through a rushed or politicized process"[70]. Security Council also proposes that in order for the truth-telling processes to succeed, the commissions "must enjoy meaningful

[65] Ingelære and Kohlhagen (2012), page 46
[66] S/2004/616,paragraph 50
[67] S/2011/634, paragraph 23
[68] Hazan (2006), page 24.
[69] Freeman (2009), page 216, book note #50
[70] S/2004/616, paragraph 51

independence and have credible commissioner selection criteria and processes. … Finally, many such commissions will require strong international support to function, as well as respect by international partners for their operational independence".[71]

The UN evaluation in 2011 states that the truth commissions

> can quickly lose credibility when not properly resourced, planned and managed, [...] are manipulated for political gain or involve insufficient efforts to solicit stakeholder input [...]. Strong national ownership is essential. Unfortunately, Governments have a mixed record of compliance with truth commission recommendations, evidencing the need for follow-up mechanisms and active and long-term political engagement from the international community and civil society. United Nations support for the implementation of recommendations needs to be incorporated early in planning processes. There is growing recognition that truth commissions should also address the economic, social and cultural rights dimensions of conflict to enhance long-term peace and security. [72]

This is essential for Burundi's TRCs set-up, as can be seen from the analysis in Chapter 3.

Taylor emphasises the need to make sure that the TRC's objectives would correlate with the expectations and needs of the ordinary Burundians as only then could the effort be meaningful. He fears that the process will be disconnected from the local communities, and introduces concepts like "a localized lens" and "grass-root impact of transitional justice"[73] which I will address later in the analysis.

Clark identifies three processes when societies try to uncover the truth after conflicts: truth-telling, truth-hearing and truth-shaping. The first two are the sides of the same coin, possibly a form of dialogue, while truth-shaping is a tool authorities could abuse to re-interpret events, purge history and manipulate evidence[74]

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[71] S/2004/616, paragraph 51
[72] S/2011/634, paragraph 24
[73] Taylor (2013/A), page 451
[74] Clark (2009), page 203-204

Buckley-Zistel's discussion on social transformation states that its success is based on how the past is remembered and that focus should shift from justice to social reconciliation, namely how people deal with the past on a daily basis. She says that ethnic groups living intertwined lives often "pretend peace" and demonstrate "chosen amnesia", meaning that they make a deliberate decision to forget some aspects of the past. They usually do not have another choice as talking "would upset the social balance"[75]. She emphasises a need for "collective memory" in societies with low level of formal education and oral daily information transmission culture[76].

An understandable way of truth-telling for ordinary Burundians would be *Bushingantahe*. However, as it will be demonstrated in Chapter 3, the ruling party has chosen a different approach.

2.6 Role of international community

Jennifer Welsh, currently the UN Special Adviser at the Assistant Secretary-General level on the Responsibility to Protect, expressed the need for the international community to take action in case of large-scale human rights violations in some countries in the following way: "We are living in a climate of heightened expectations for the international community to "do something" when populations are experiencing natural disasters or man-made catastrophes"[77]. Two principles have been developed for interference in domestic affairs of states: universality and responsibility to protect.

2.6.1 Universality

UN notes that "domestic justice systems should be the first resort in the pursuit of accountability. However, where these systems are unable or unwilling to prosecute perpetrators of international crimes, the international community stands ready to respond"[78]. This is done under the universality principle which means that "some crimes

[75] Buckley-Zistel (2009), pages 126 and 136
[76] Buckley-Zistel (2009), page 133
[77] Welsh (2009), page 336
[78] S/2011/634, paragraph 32

are so grave that all countries have an interest in prosecuting them. [...] this exceptional form of jurisdiction is rightly reserved for the prosecution of only the most serious crimes [...] its use raises complex legal, political and diplomatic questions".[79]

Teitel discusses how a crime against humanity is a breach against a "core global rule-of-law value" and how the humanity law "offers no implied basis for immunity of political actions".[80] Teitel claims that even though ICC has a jurisdiction to prosecute, ICC has the ultimate authority to decide whether or not to do it and that sometimes indictment and search for accountability poses "major risks for the fragile peace and security" and as a result having the opposite effect on the population as a whole[81].

The actual involvement of the international community in the Burundi genocide settlement and the implementation of the goals indoctrinated by the UN institutions will be analysed in Chapter 3.

2.6.2 Responsibility to Protect (R2P)

Mass atrocities happening in one country should not be passively observed and tolerated by international community. A principle called R2P has been adopted in order to unify the rules of engagement.

The three pillars of the responsibility to protect are:

1. The protection responsibilities of the State. The State carries the main responsibility to protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
2. International assistance and capacity-building. The international community has a responsibility to encourage and assist States in fulfilling their responsibility to protect;

[79] S/2004/616, paragraph 41
[80] Teitel (2011), page 59
[81] Teitel (2011), pages 88-89

3. Timely and decisive response. The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement. If a State is manifestly failing to protect its populations, the international community must take collective action to protect the populations in question. [82]

R2P makes sovereignty a responsibility, giving people in conflict, and hopefully also post-conflict societies, some sort of a guarantee that their human rights will be protected if their own state is unable or unwilling to do it.[83] The implementation has, of course, proved to be challenging as the basis for the concept to realise is the existence of political will of the international community[84]. The different international community approach to Rwanda and Burundi, closest to this thesis, is a clear example that similar situations can receive different amount of attention and support.

The UN Secretary General report A/68/947-S/2014/449 from 11 July 2014, recognises that the three pillars of R2P "are of equal weight, mutually reinforcing, non-sequential"[85], focuses on pillar II, namely encouragement, capacity-building and protection assistance, to enhance international community's role in preventing the states from falling into "systematic violence and atrocity crimes"[86].

The report identifies 3 stages in the development of atrocity crimes:

> *Stage 1*. The presence of one or more of the following factors: presence of armed conflict or other forms of instability; a record of serious violations of international human rights and humanitarian law, including persistent patterns of discrimination; economic deprivation and related disparities; weaknesses in state structures; motives or incentives to commit atrocity crimes, including the

[82] A/63/677
[83] R2P with its possibilities as well as institutional limitations and challenges is discussed in detail in a book "An Institutional Approach to the Responsibility to Protect" by Zyberi (ed., 2013).
[84] Emphasised also in S/2011/634, paragraph 9
[85] A/68/947-S/2014/449, paragraph 6, page 3. The report identifies various actors, approaches and principles to guide efforts to assist States through encouragement, capacity building and protection assistance.
[86] A/68/947-S/2014/449, paragraph 5, page 3

> presence of exclusionary ideology; [...]; the presence of actors with the capacity to engage in such crimes. Preventive action: focused strategies to build national resilience.
> *Stage 2.* The risk(s) from stage 1 transform into real threat(s), because of crises or political transition. Human rights record worsens.
> *Stage 3.* Imminent risk of atrocity crimes.[87]

UN has also detected the risk-factors that should be eliminated to prevent (new) repressions and related armed conflicts, and based on history and tradition, possibly mass atrocities. In its 2011 evaluation, UN described how

> States marked by ineffective governance, repressive policies, poverty, high rates of violent crime and impunity pose significant threats to international peace and security. Deep capacity deficits in State justice and security institutions, exacerbated by widespread corruption and political interference, lead to diminishing levels of citizen security and economic opportunity. Resentment, distrust or outright hostility towards the Government grows. Radicalized ideological movements often stand ready to harness these sentiments, inciting marginalized groups, unemployed youth and criminal elements to challenge the established order through violent means[88].

The description above is Burundi 2015 in a nutshell. As will be analysed in Chapter 3, Burundi is in a serious threat of falling back into a cycle of violence, and international community should, differently from 1993 genocide, get involved in peacekeeping as well as peacebuilding programmes before the conflict escalates as a result of elections in June 2015. More specific steps will be looked at in Chapter 4.

[87] A/68/947-S/2014/449, paragraphs 8-10, pages 3-4
[88] S/2011/634, paragraph 6

3 Arusha Peace and Reconciliation Agreement for Burundi (2000) and TJ process in Burundi until April 2015

This chapter aims at answering the first part of the research question, namely what are the achievements and shortcomings in the implementation of Arusha Agreement. The chapter is divided in 4 subgroups: (1) Arusha Agreement analysis, identifying the main clauses related to human rights and TJ; (2) International law obligations for Burundi; (3) Analysis of TJ in Burundi from ca 1993-2015 and the role of the international community in supporting Burundi's move towards the rule of law; (4) brief analysis of the motivation of the government of Burundi to set up TRC in 2014, after delaying it for over a decade.

3.1 Arusha Agreement

The main goal of Arusha Agreement, recorded in the Preamble, notes that signatory parties, as well as parties who later agreed to Arusha Agreement contents via ceasefire-agreements, like the current President's political party CNDD-FDD, reaffirm their

> unwavering determination to put an end to the root causes underlying the recurrent state of violence, bloodshed, political instability, genocide and exclusion which is inflicting severe hardships and suffering on the people of Burundi, and seriously hampers the prospects for economic development and the attainment of equality and social justice in our country.

Art. 3 of the Preamble continues that

> The Parties commit themselves to refrain from any act or behavior contrary to the provisions of the Agreement, and to spare no effort to ensure that the said provisions are respected and implemented in their letter and spirit in order to ensure the attainment of genuine unity, reconciliation, lasting peace, security for all, solid democracy and on equitable sharing of resources in Burundi.

Protocol I provides an overview of the history and nature of the conflict, explicitly Art. 4, where Parties "recognize that: (a) The conflict is fundamentally political, with extremely important ethnic dimensions; (b) It stems from a struggle by the political class to accede to and/or remain in power". Chapter 2 of Protocol I is dedicated to political, judicial,

economic, cultural and social solutions to end violence and build up the society as planned. These are active choices promoting reconciliation that I will use in Chapter 5 as solutions when discussing the possible TJ outcomes and mechanisms for Burundi in 2015 and onwards. Provisions related to political reconciliation and reconstruction through power-sharing have been followed up. This makes sense as

> impunity for past human rights violations is one area where interests of former enemies easily meet. [...] Power-sharing agreements between opponents with blood-stained hands probably offer the most tangible evidence for the relevance of this realist perspective. In fact, the interests of those opponents converge when both parties can push back truth-telling and/or criminal prosecution[89].

Very important for this thesis is Art. 8 of Chapter 2 in Protocol I as it provides the future National Truth and Reconciliation Commission (TRC) with three extensive mandates: (a) investigation (to "bring to light and establish the truth regarding the serious acts of violence [...] from independence (1 July 1962) to the date of signature of the Agreement, classify the crimes and establish the responsibilities, as well as the identity of the perpetrators and the victims"); (b) Arbitration and reconciliation (not acted upon at the time of writing); (c) Clarification of history ("The purpose of this clarification exercise shall be to rewrite Burundi's history so that all Burundians can interpret it in the same way" (not acted upon at the time of writing)). Additionally, Arusha Agreement establishes how the Commissioners will be appointed.

Protocol I Chapter 2 Art. 9(6) provides for the set-up of the UN Security Council's international judicial commission of inquiry and the application by the government for the set-up of the international criminal tribunal by the UN Security Council (result described in Chapters 3 and 4).

Protocol II, called "Democracy and Good Governance", is basically a recipe for Burundi's new Constitution, including a whole "Charter of Fundamental Rights", power-sharing arrangements for different branches of the government, and appointing an independent

[89] Aroussi and Vandeginste (2013), pages 190-193

Ombudsperson. I will hereby like to draw attention to 3 articles: (1) "The task of government shall be [...] in particular to heal the divisions of the past, to improve the quality of life of all Burundians, and to ensure that all Burundians are able to live in Burundi free from fear, discrimination, disease and hunger" (Art. 1(5), Protocol II); (2) "In its functioning the Government shall respect the separation of powers, the rule of law, and the principles of good governance and transparency in the management of public affairs" (Art. 1(6), Protocol II); and (3) "temporary immunity" for "politically motivated crimes" (Protocol II Chapter II Art. 22(2)c)).

Protocol III is called "Peace and Security for All". While Chapter 1 defines what those concepts mean for Burundi and comes with some suggestions, Chapter 2 identifies the causes of the violence and insecurity in Burundi. For example, "disruption of the traditional socio-political system in effect under the monarchy" (Art. 2(4)), "failure to satisfy the basic needs of the citizens as a result of underdevelopment and lack of a sound economic policy[...]" (Art. 1 (5)(e)), "The unbridled struggle for power which, following the principle that "end justifies the means", resulted in recourse to violence and the deliberate manipulation of ethnic sentiments[...]" (Art. 1 (7)), etc.. Art. 6 critically enlists the consequences of the insecurity and violence, all of which are still present in Burundi in spring 2015 as well, e.g. culture of violence, widespread abuse of power corruption, plundering of natural resources, etc.. Art. 8 of Chapter I goes on to enlist the duties of the State in regards to human rights.

Protocol IV is called "Reconstruction and Development". Chapters 2 and Chapter 3 of that Protocol are relevant for this thesis. Namely, Art. 13 describes political reconstruction:

> Political reconstruction is aimed at making national reconciliation and peaceful coexistence possible, and must be directed towards the establishment of the rule of law. In this context, the following programmes and measures shall be undertaken: (a) Launching of a multi-faceted national reconciliation programme; (b) Promotion of the rights and freedoms of the human person; (c) Education of the population in the culture of peace; (d) Initiation of tangible actions for the advancement of women; (e) Reform of the judicial system; (f) Support of democratization, including strengthening of the parliamentary system and support for the political party system; (g) Support for the

development and strengthening of civil society; (h) Provision of support for independent media.

Art.-s 14, 15 and 16 focus on a launching of a long-term economic and social development programme which would "embark on the path of sustainable growth of equity". As most of the objectives are not met in the spring 2015, I will focus on them and the guidelines in Chapter 4 of this thesis as possible means in the future TJ process.

3.2 Human rights obligations applicable to Burundi

Burundi has ratified the majority of relevant international human rights instruments, to the extent that several of them, for example Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant of Economic and Social and Cultural Rights (ICESCR), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and African Charter on Human and People's Rights (ACHPR), are mentioned in the Constitution of March 2005 (Art.19) as directly applicable and prevailing over conflicting domestic legislation. Others, not mentioned above, would be the 1949 Geneva Conventions with the 1977 two additional protocols on the law of armed conflict, Optional Protocol to CRC on the involvement of children in armed conflict, Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) (long delay in actual enforcement from 2004), Convention Against Torture (CAT), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), protocols to ACHPR on the establishment of an African Court and on the rights of women in Africa, African Charter on the rights and welfare of the child, etc.. The practice of invoking and applying the international human rights conventions in practice is, however, scarce (statistics in Chapter 1, analysis in Chapters 3 and 4).

Burundi ratified the Genocide Convention in May 2003 allowing no retrospective application. However, as a result of customary international law, the prohibition of crimes of genocide, crimes against humanity and war crimes, and other rules in the Conventions apply also to crimes committed before 2003 (*erga omnes* rules). Seen from this perspective,

such serious crimes could come under jurisdiction of the Special Court (if ever established), but that, of course, is again dependent on the political will of those in power.

Burundi delayed the ratification of the International Criminal Court (ICC) Statute which entered into force only from December 2004, even though Burundi signed the Statute already in January 1999. According to Art.11(3) and Art. 24(1) ICC has jurisdiction to handle war crimes only from the date of ratification.

3.3 TJ in Burundi until April 2015

Even though the cycles of violence have taken place from the independence of Burundi in 1962, only minimal efforts were made in the TJ field before the 1990s' democratisation attempts by President Buyoya (political party UPRONA). Amnesty law from September 1993, promoted by Buyoya, was an attempt for reconciliation in the society. The scope of crimes included in the amnesty provisions was very wide and covered all the events from 1965 onwards. As a result of the law implementation, 5000 of 7500 prisoners were released[90].

The first democratically elected Hutu president Ndadaye (political party FRODEBU) was assassinated on 21 October 1993. The large-scale massacres of the Tutsi civilians followed the assassination. Until today it is not clear whether the attacks were planned by the rising political elite or whether it was a spontaneous reaction to the assassination of their Hutu president. The so-called "massacre trials" were held, but the overall opinion was that the political elite was not reached because the focus was on the implementation of the coup rather than planning and organizing, thus impunity prevailed and was further negotiated by the perpetrators into Arusha Agreement[91].

A preparatory fact-finding mission to Burundi (Ake-Huslid mission) took place in March 1994. As the mandate of the mission was political, not judicial, the names of the

[90] Vandeginste (2010), page 82
[91] The "massacre trials" are described in detail in Amnesty International (1998) "Burundi: Justice on Trial".

perpetrators, even though available, were not made public[92]. The report of the mission suggested setting up international inquiry with judicial mandate. The UN Security Council fact-finding mission in August 1994, however, concluded that focus of TJ should be on strengthening the national judicial system over the international judicial mandate, thus choosing maintaining negative peace and fragile stability over accountability or reconciliation[93].

Based on the UN Security Council Resolution S/RES/1012 (1995), International Commission of Inquiry in Burundi was set up in order to establish the facts relating to the assassination of President Ndadaye in 1993 and to establish facts related to massacres and other following related serious acts of violence. The mandate included also a request to propose measures to, among other matters, eradicate impunity and promote national reconciliation in Burundi. As a pure fact-finding mission, the Commission did not get access to official crimes-related files, the documents they saw were in Kirundi, and copies were not allowed. The work was troubled by the security issues both in Bujumbura and the whole land, inadequate resources, cultural and linguistic challenges and illiteracy which lead to news travelling from mouth to mouth. The Commission concluded that

> the assassination of President Ndadaye, as well as that of the person constitutionally entitled to succeed him, was planned beforehand as an integral part of the coup that overthrew him, and that the planning and execution of the coup was carried out by officers highly placed in the line of command of the Burundian Army. The Commission considers, however, that with the evidence at hand, it is not in a position to identify the persons that should be brought to justice for this crime.[94]

The Commission also concluded that "acts of genocide against the Tutsi minority were committed in Burundi in October 1993, and that international jurisdiction should be asserted with respect to these acts"[95].

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[92] Vandeginste writes that «the absence of «naming names» of those to be held accountable is not due to the lack of information and knowledge, but to the nature of the mandate of the mission».
[93] S/PRST/1994/47
[94] United States Institute of Peace (2002), page 44.
[95] United States Institute of Peace (2002), paragraph 496, page 62.

President Buyoya requested in 1997 that the international criminal tribunal for Burundi be set up, but it never happened because the UN Secretary-General considered the circumstances in Burundi unsuitable for an international tribunal at that time, but reserved a possibility to return to the matter[96]. The Special rapporteur Pinheiro, condemning the conclusion of the International Commission of Inquiry to let the national weak justice system in Burundi prosecute those guilty of the genocide, coup and massacres, recommended once more the setting up of the international tribunal[97]. Due to considerable disagreements within the UN about the priorities when choosing TJ mechanisms in Burundi, very little happened until Arusha Agreement was concluded in 2000. The fact that those implicated in the killings and war crimes continued to exercise power, "demonstrated to people in both Burundi [...] that influential governments were willing to tolerate slaughter in a region that was not of strategic concern".[98]

All of the above-mentioned missions took place at the time of an armed conflict. The actual peace didn't arrive even at the signing of Arusha Agreement in 2000 as the main rebel groups were not part of the signatories, and later used the political climate to press for transitional immunities. CNDD-FDD signed a Global Ceasefire Agreement (GCA) on 16 November 2003, establishing under Article 2 temporary (or provisional immunity) to all leaders and combatants of the CNDD-FDD, all the security forces of the government of Burundi and also for those already convicted for "political crimes". Vandeginste writes how after the victory of CNDD-FDD party and appointment of Pierre Nkurunziza as the President, a commission was set up to identify all political prisoners. All those enlisted were released provisionally in 2005 and 2006 by the decrees of the Minister of Justice (not the prosecutor nor based on a national piece of legislation). They could possibly have to appear in front of the Special Chamber or the Truth and Reconciliation Commission at some point in the future. A total of 3299 persons were released[99].

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[96] S/1997/547, paragraph 18
[97] A/51/459 (7.10.1996)
[98] Human Rights Watch (2009)
[99] Vandeginste (2010), page 105

Pierre Nkurunziza, previously organizing and implementing guerilla and rebel activities and atrocities in the bushes, is now the President of the nation. Arusha Agreement entailed no vetting clauses for presidential position, yet the Constitution of March 2005 prevented former criminals from running for the office. The Electoral code, however, included an exception for the first elections after the Electoral Code was passed stating that those having provisional immunity can exercise their civil and political rights, even in case of criminal conviction, and this clause was never contested in the Constitutional Court[100].

The other rebel group Palipehutu-FNL signed several peace Agreements (Dar-Es-Salaam Agreement in June 2006, a Comprehensive Ceasefire Agreeement (CCA) in September 2006 and the final one in December 2008), set up a political party in April 2009 and named a president candidate for 2010 elections. Their agreements contained similar temporary immunity clauses.

In principle the terms "transition period" and "transitional immunity" could be expected to match in terms of time. Art 13(2) of Protocol II defines transition period's end: "The transition period shall culminate upon the election of the new President. The presidential election shall take place after the first democratic election of the National Assembly". In reality, the first (and current) President was appointed by the first democratically elected National Assembly in 2005, thus marking the end of the transitional period, even though the civil war had not ceased by that time yet. The time period for the "provisional" or "temporary" immunity, however, was not specified, and interestingly enough, the transitional period was already over by that time of signing the last peace agreements. Vandeginste writes that "it was stipulated that the provisional immunity was granted until the establishment of the Truth and Reconciliation Committee and the Special Tribunal. [...] as long as neither of the two mechanisms is established, the immunity continues to

[100] Vandeginste (2010), pages178-181 discuss this in great detail. Nkurunziza, together with 6 others, was sentenced to death on 12 February 1998 for "involvement in a mining operation of the rebel movement in Bujumbura in early 1997, in which eleven people were killed". Not surprisingly, the 5 of them still in prison in 2004 were later also released under provisional immunity clause.

apply"[101]. Even though amnesty as such was not agreed on without the limits established in the international law, the creative use of provision immunities gave the same result in practice.

The Constitutional Court in Burundi has been awarded wide powers to safeguard the TJ law in Burundi, yet as per today, the Court judges are appointed by the President, and the Court has a reputation of a political player. When looking at the mandate of the Court, Vandeginste clearly points at a lacunae in the Court's jurisdiction that the executive branch is widely taking advantage of in the TJ process. Namely, the Court can rule on cases regarding the constitutionality of the passed legislation, but not the ministerial and presidential decrees that are in the autonomous powers of the executive actor in question. This, in practice, means that as the TJ until today has largely been executed through such decrees (even though surely unconstitutional in nature), they cannot be analysed by the Constitutional Court, for example releasing "political prisoners"[102]. Another obvious problem is the actual access to the Court as many cases are thrown out based on technicalities.

With its resolution S/RES/1650 (2005), Security Council expressed its support for Burundi's TJ process, insisted on TJ's importance in rebuilding the nation and stressed "the need to put in place the reforms provided for in Arusha Agreement for Peace and Reconciliation in Burundi" and encouraged "the Burundian authorities to continue to work with [...] the establishment of the mixed Truth Commission and the Special Chamber within the court system of Burundi referred to in resolution 1606 of 20 June 2005".

National Consultations were organised by UN Integrated Office in Burundi (BINUB) in 2009 and 2010 to establish the expectations of ordinary Burundians to the TJ process and developing of a possible draft law for TRC that would help serve those expectations as well

[101] Vandeginste (2010), page 168

[102] Vandeginste (2010). He states such decrees as « du domaine de la loi», which translates more or less «in the scope of prevailing law».

as comply with international law standards[103]. Extensive fieldwork by Ingelære and Kohlhagen reveals that expectations were related to the revitalisation of daily life and interactions, dialogue, festivities, ceremonies, reunions, strengthening of social fabric, honoring the victims and a wish to come together and restore the social relations that were destroyed by the atrocities and the long civil war[104].

Based on his fieldwork in Burundi, Taylor writes that the interviewees, when discussing reparations, mainly referred to forward-looking purposes that would contribute to the improvement of life conditions, emphasizing that addressing the root cause of Burundi's violence, namely unequal access to resources, and focusing on sustainable recovery, are essential to meet the expectations, but that re-burials stand high on priority list[105]. Ingelære and Kohlhagen also concluded that ordinary Burundians emphasised largely a non-prosecutorial approach that would create a space to coming together again, making references to Bushingantahe tradition and principles of rehabilitation and reconciliation as expected results of the TJ process[106].

In July 2011, President Nkurunziza announced the plan to establish the Truth and Reconciliation Commission (TRC), after which a special tribunal would be formed.[107] According to Amnesty International's assessment, the then presented draft law on the TRC did not comply with international standards, and victims would still be denied truth, justice and reparations[108]. Impunity Watch added that the draft law didn't comply with the expectation of the Burundian people expressed during the 2010 National Consultations either[109].

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[103] S/2015/36, page 2
[104] Ingelære and Kohlhagen (2012), page 54
[105] Taylor (2013/A), pages 465 and 457
[106] Ingelære and Kohlhagen (2012), page 57
[107] Genocide Watch (2012), page 64
[108] Amnesty International (2012). Amnesty International also published recommendations to Burundian authorities regarding the draft bill in order for TJ to have any effect, at http://demandjusticenow.org/burundi/
[109] Impunity Watch (2013), page 2

Recommendations were made by local journalists, local as well as international civil society organisations and international TJ experts, but Burundi's government ignored everything. The TRC act was passed (with boycott from opposition) on April 17th 2014, having significantly different contents than the draft law had had and ignoring the recommendations of many knowledgeable actors. As a result, the Commission members would all be Burundian citizens, handpicked by the President, thus excluding international expertise. As after the 2010 elections, CNDD-FDD controls both the legislature and the executive branches, TRC's impartiality is doubtful.

In addition, TRC has four years to fulfill an extensive, almost impossible, mandate: (1) establish the truth about mass atrocities between 1962 and 2008; (2) identify and map mass graves; (3) promote reconciliation and forgiveness; (4) propose a reparation programme[110]. TRC gets to decide how the truth-telling will be organised and what cases will be investigated and heard[111]. Even though Arusha Agreement mentions two mechanisms (TRC and the criminal tribunal), the final draft has removed all references to criminal prosecution as well as the obligation to publish the list of alleged perpetrators[112]. As a result Burundi's government has chosen a path contrary to the international community's recommendations. The preamble of GCA gave Arusha Agreement a superior source of law status (Art. 9 in preamble) and the Constitution of 2005 should be interpreted in the light of Arusha[113]. Interestingly enough, the ruling party's actions demonstrate ignorance to Arusha's conditions[114].

The Commission 11 members were appointed on 3 December 2014 by Burundian National Assembly, but opposition boycotted the vote. The opposition leader Charles Nditije (UPRONA) commented the event:

[110] Hirondelle News Agency (04.12.2014)
[111] Vandeginte (2012/A), page 364
[112] Impunity Watch (2013), page 4
[113] Vandeginste (2012), page 147. More detailed analysis there.
[114] AllAfrica (17.07.2014)

> We wanted to protest against setting up this TRC, which only reflects the wishes of the ruling CNDD-FDD and ignores the element of justice contained in the Arusha peace accords [...]. Normally it takes two to have reconciliation. One side cannot force the other to hand out a pardon [...] truth and reconciliation cannot happen without justice[115].

The Conference of Catholic Bishops has joined the many stakeholders (e.g. civil society organisations and several opposition parties) who protest and criticise the process of establishing TJ mechanisms, especially the lack of consultations and actual possibility to participate as well as failure to accommodate the recommendation from the National Consultations 2009 to appoint a civil society representative as one Commissioner[116].

Human rights activist Pacifique Nininahazwe states very accurately that the involvement of the CNDD-FDD in the conflict is widely known among Burundians and that is completely abnormal that the ruling party can, without external consultations, decide reconciliation matters. He also adds that "the law does not mention anything related to justice or sanctions against those who have committed serious human rights violations; and the vetting mechanism has been excluded".[117] Impunity Watch adds when discussing the final draft of the bill: "The intentions of the government to use the process as a way to guarantee amnesty for crimes under international law and institutionalise a process of pardon has now apparently crystallised".[118] Likelihood that the perpetrators having some affiliation with the ruling party will go unpunished is present. The even more serious prospect is how the law will be abused against the political opposition and Tutsi ethnic group. The genocides and murders took place for over 40 years, so there are many "war criminals" and "accomplices" to selectively choose from for statistical purposes and the government is known to discriminate against the Tutsis daily already without such a powerful tool as the newly passed TRC bill.

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[115] Daily news (SAPA) (04.12.2014)
[116] S/2015/36, pages 6-7. The protest from the Catholic Church is very significant in a highly religious society like Burundi, especially considering that out of 11 Commission members, 6 are representatives of religious communities and, the selection of Commissioners seems to respect required ethnical and gender balance. See also African Review (09.04.2015) article.
[117] AllAfrica (17.07.2014)
[118] Impunity Watch (2013), page 3

Based on many sources, I can surely state that Burundi's daily reality is clouded by targeted killings, impunity, human rights violations, rising political tensions, armed banditry and lack of the rule of law[119]. As the TJ process is under the control of predominately Hutu political party, who has now appointed the Commission members it can trust to deliver the expected results, the chances that victims and witnesses dare to speak out their truth that doesn't match the expectation of the ruling party are relatively minimal. Considering that different ethnic groups in Burundi describe very differently how the atrocities took place and there is no experienced neutral mediator present, the process of establishing a common truth that would be acceptable to both ethnic groups, will be very challenging.

On 19 January 2015, the Secretary General of the UN Office in Burundi (BNUB) presented a report to provide an overview of UN's field missions' accomplishments in Burundi since 1993[120]. Despite presenting a very real picture of rising political tensions before the elections in June 2015 that can lead to a new cycle of violence and terminate the fragile negative peace, BNUB has ended its mission by 31 December 2014 and handed over the guardian position to the United Nations country team, which mainly focuses on development issues, and the United Nations Electoral Observer Mission in Burundi (MENUB).

Several sources mention that the conflict in Burundi has shifted from being ethnical to being political and consider this to be a success[121]. The question to ponder over is what exactly qualifies as a success here: signing Arusha Agreement or actually seeing the fulfillment of the set goals, in this case positive peace and social reconciliation? As per today, qualifying the situation as "success" seems to be a strong over-statement. Be it as it may, the stakes of the elections in June 2015 are very high. Seger provides a reason for

[119] See for example S/2015/36, Amnesty International Report 2014/2015, reports by the Peacebuilding Commission- Burundi Configuration, a NORDEM Special Report 2015, Human Rights Watch 2015 Report, etc..
[120] S/2015/36 (19 January 2015)
[121] See for example, S/2015/36, the NORDEM Special Report 2015.

that: "Today in the absence of a valid alternative in the private sector, political power all too often amounts to economic power"[122]. So despite a possible shift in a nature of conflict, the danger of unrest is just as imminent and devastating for ordinary Burundians. NORDEM report states that "Burundi has returned to a pattern where the state is dominated by narrow elite. A new ruling elite, linked to the CNDD-FDD, has replaced the pre-conflict Tutsi elite"[123] and adds that the only way for the opposition to be able to exercise any influence in the National Assembly in the light of current power-sharing arrangement, is to get minimum 1/3 of seats in the National Assembly at the 2015 elections[124].

The first signs of trouble related to the electoral processes have already been registered. BNUB's report from January 2015 mentions the irregularities in the voter registration process and fraudulent distribution of national identity cards selectively to CNDD-FDD supporters and also to minors below the voting age, restrictive laws regarding the political space as well as intimidation, harassment and political violence towards the opposition and the civil society[125].

Seger describes in his report how "it would take only little for Burundi to make the last effort towards irreversible peace and consolidation and grow into a model case for a successful post-conflict transition"[126], mentioning truly inclusive dialogue, opening up the political space to ensure basic liberties, like freedom of speech and assembly, and promoting activities of human rights defenders as possible solutions. I will introduce my recommendations in Chapter 4.

3.4 Why TRC now?

Almost 15 years after the signing of Arusha Agreement, the TRC, one of the TJ mechanisms mentioned in the Agreement, is being launched. At the face value, these are

[122] Seger/United Nations Peacebuilding Commission (29.12.2014), page 4
[123] NORDEM report, page 55.
[124] NORDEM report, page 56.
[125] S/2015/36, pages 3 and 14
[126] Seger/United Nations Peacebuilding Commission (29.12.2014), page 3.

good news. 15 years is a time for a whole new generation of Burundians to grow up, live with and elate to versions of truths about the horrific 50 years history of mass atrocities being discussed, naturally subjectively, around the dinner tables. The question, however, still remains: why now?

3.4.1 Wish to stay in power

The reasons for setting up the TRC in Burundi are in my opinion political. President's second term is running out and every effort is made now to prolong the term for another five years. This would be in conflict with Arusha Agreement as well as current Constitution's terms. Political tensions are rising because the ruling party has been pushing towards the change in the Constitution to allow the President's third term, failing with only one vote. The reason is relevant: the President has not managed to establish locally and internationally accepted amnesty for the war crimes before 2005, so by leaving the office, he loses control over the TJ process and related decisions.

Burundi's TJ will very likely be justice of the ruling party. CNDD-FDD didn't win the civil war, but through diplomacy and politics, the former guerillas have fought and will continue to fight, with legal as well as unfair and unethical means, for their position in Burundi's politics to decide what truth will be recorded as common history.

The third-term related tensions have woken the international community as they can be detrimental to the peace in Burundi. CNDD-FDD has now adopted a "controversial interpretation of the constitutions" claiming that the constitution "provides for two terms by universal suffrage", thus requiring that people elect him two times[127]. In 2005 Nkururziza was appointed by the National Assembly, thus after CNDD-FDD's considerations the first five years do not count. This interpretation has been condemned by ambassador of the European Union in Burundi, Patrick Spirlet, who encourages the government of Burundi to respect the Constitution and Arusha Agreement providing for limited 10 years in power for

[127] NORDEM Special Report 2015, pages 45-46.

a state leader to avoid the deterioration of the political climate[128], as well as the US special envoy for the Great Lakes Region of Africa and the Democratic Republic of Congo, Russel Feingold, who insisted that Burundi respect the contents and spirit of Arusha Agreement in terms of the presidential elections and stated that "while some constitutional provisions were open to interpretation, the accord is clear that no president should govern for more than two terms"[129].

Charles Nditije, a former Chairman of an influential opposition party UPRONA, cites Article 103 of the Constitution: "The mandate of the President of the Republic debuts on the day of his taking of the oath and ends when his successor enters into his functions"[130]. In addition, Paul R. Seger, the Chairman of the Peacebuilding Commission- Burundi Configuration, reports that "the positions of various opposition parties have radicalized on this issue…they would interpret the eventual announcement of a third term as a *coup d'etat* further raising the stakes the question already engenders"[131]. Nditije, Agathon Rwasa, former Chairman of political party FNL, and 6 other political parties have now formed a political coalition to increase their influence in the election process in 2015[132]. To prevent the running of known opposition leaders as a president candidate, the Supreme Court spokesperson announced on 20 August 2014 that "all presidential candidates in the 2015 elections would have to provide [...] a document certifying that there are no pending lawsuits against them", while the ruling party fabricates alleged claims and lawsuits against the potential President candidates in 2015 elections posing the greatest risk to the current President, to eliminate them formally from the electoral race[133].

The response from the President's spokesperson Willy Nyamitwe is that "anyone seeking to spark protests would face the law [...] whoever calls on people to take on the streets[...]

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[128] RFI news (06.03.2015)
[129] The Citizen news (16.03.2015)
[130] Siboniyo (22.01.2015)
[131] Seger/United Nations Peacebuilding Commission (29.12.2014), page 3
[132] Seger/United Nations Peacebuilding Commission, (29.12.2014), page 3
[133] S/2015/36, pages 3-4

will be considered a troublemaker and will be treated as such"[134]. Laurent Kavakure, Foreign Minister, commented as follows: "It is true that Arusha Agreement for us is a historic agreement [...] but we do not regard it as a Bible"[135].

The elections are budgeted to cost over USD 60,5 million, covered largely by the international community[136]. However, some contributing partners have decided to make their second payments conditional, thus taking a two-step approach. Also, IMF has critisised the government's decision to budget 18% of its revenues for the elections as this could jeopardise "the implementation of important reform projects"[137].

Ruling party's decision from April 2015 to nominate Nkurunziza for the third term, despite the many warnings from the influential international actors, demonstrates clearly how personal interests are prioritised over those of the population. Instead of focusing on national reconciliation, the ruling party risks the fragile peace for personal agendas. Ordinary people have come to the streets in May 2015 to demand the withdrawal of Nkurunziza's candidacy because, in practice, once Nkurunziza is a President candidate for the ruling party, he has just as well as already won.

3.4.2 Burundi needs international legitimacy

Burundi needs international legitimacy due to its dependency on foreign aid. So at least on the paper the TJ process must be started. Vandeginste describes accurately that

> the prospect of full funding through the donor basket fund is surely an important carrot. [...] Furthermore, the UN's request that the prosecutor of a special tribunal must be fully independent does not mean much if [...] the establishment of the tribunal is again delayed for a number of years. In other words, the expected (financial and legitimacy) benefits of establishing the TRC clearly exceed the (limited) costs or risks involved for the government[138].

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[134] Daily Nation news (16.02.2015)
[135] Original text: "L-accord d'Arusha pour nous, c'est un accord historique il est vrai (…), mais qui pour nous ne doit pas être considéré comme la Bible", taken from RFI article (06.03.2015).
[136] Seger/United Nations Peacebuilding Commission (29.12.2014), page 6
[137] Seger/United Nations Peacebuilding Commission (29.12.2014), page 6
[138] Vandeginste (2012), page 361

The good news is, however, that despite the real rhetorical reasons, the norms that can, once the time is right, be beneficial for the opposition and civil society to invoke, are part of the national legislation and supported by the international human rights law and international criminal law obligations that Burundi has accepted. Ordinary people are "waking", and the situation can become critical for the oppressive regime very fast.

3.4.3 Gains are bigger than risks

International interest for the actual TJ process seems to be lacking. UN has been supporting the maintenance of peace and security in the region and the international community was very involved in the peace process until the elections in 2005, but has been more moderate after actual ceasing of armed conflict and the former military groups registering themselves as political parties and entering politics. Vandeginste describes how "Burundi's international partners [...] deliberately delayed the establishment [of TJ mechanisms] until they deemed the conditions more conducive. The country's political elite soon realized that the UN had no intention of pushing for the mechanisms", at least not with any urgency[139].

The timing of setting up TJ mechanism(s) has influenced the outcome of TJ so far. If the mechanisms had been set up before the first elections took place in 2005, the perpetrators could have been removed from politics. As the elections took place first, those who likely would have been tried in the tribunals are currently passing legislation and policies that favor their own status.

[139] Vandeginste (2012)

4 Way forward to promote the achievements and address the shortcomings in the implementation of Arusha Agreement.

This chapter aims at answering the second part of the research question, namely how to promote the achievements and address the shortcomings in the implementation of Arusha Agreement, and coming up with recommendations for TJ and development that would fit the legal, economic and social context of Burundi in 2015 and would serve the interests of ordinary Burundians. Some of the recommendations were already included into Arusha Agreement, some have been proposed in general terms by the UN, and some will be proposed by me. In addition, this chapter addresses the role of the international community and its R2P in the light of 2015 elections.

Based on the analysis in Chapter 3, I can conclude that the achievements of TJ process in Burundi are related to implementation of power-sharing provisions in Arusha Agreement. Namely, two rounds of relatively democratic elections have been held, with the third one taking place in May 2015. The prevalence of "negative peace" for almost a decade is also an achievement. International Peace Research Institute (PRIO) has stated already in 2008, however, that the Burundi's case has demonstrated that the power-sharing conditions for the Constitution may not be enough to guarantee political elite cooperation, as is the case now in 2015 when the divided political opposition struggles to even influence, not surely control, the coalition government[140].

TJ related activities beyond political power-sharing are characterised by delays and postponements. The mandate and likely activities of the TRC from 2015 onwards are in the very starting phase and are being already heavily critisised by both the local and international stakeholders. Therefore, I will develop a list of suggestions for the way forward in spring 2015 as if the TJ process has not been started at all. The reason for such

[140] Falch/PRIO (2008), page 4.

decision is that the root-causes for the conflict identified in Arusha Agreement have not been dealt with and the struggle for power and economic resources is still the motivation behind the "reforms" by the Burundi government. In addition, such starting point also gives me an opportunity to refer to "lessons learned" from other states' TJ, especially truth-telling, attempts that might be useful for Burundi's process.

So, first, I will look at the categories of proposed recommendations to dealing with the root causes of the conflict in Burundi described in Arusha Agreement Protocol I Chapter II, and create a so-called baseline before the start of the possible implementation. Second, I will make a substantive decision about the focus on TJ, namely justice vs reconciliation. Third, I will also look at indicators that would be useful in predicting the success of TJ process, in the light of possible suggestions in Burundi. And finally, I will make several recommendations how I see that the TJ process should be developed in Burundi, keeping the focus on the two following aspects: that the suggestions would benefit an ordinary Burundian, and that the suggestion would help prevent the re-occurrence of atrocities.

4.1 Identified solutions in Arusha Agreement

The root causes for the conflict were identified in Protocol I Article 4 of Arusha Agreement: (a) The conflict is fundamentally political, with extremely important ethnic dimensions; (b) It stems from a struggle by the political class to accede to and/or remain in power.

Protocol I Chapter 2 proposed solutions to overcome the root causes and guide the society towards the reconciliation. The following groupings of solutions can be identified: (1) Political: new constitution, separation of powers, new electoral law, prevention of *coups d'etat*; (2) Related to genocide, war crimes and other crimes against humanity; (3) Related to exclusion; (4) Related to social services; (5) Related to cultural principles and measures; (6) Related to national reconciliation.

Political solutions have been more or less been dealt with through power-sharing arrangements and following legislation amendments, and will thus not be addressed by me.

Solutions related to genocide, war crimes and other crimes against humanity, included both political and justice measures[141]. Political principles and measures were to include, for example, combating impunity of crimes, implementation of a vast awareness and educational programme for national peace, unity and reconciliation, establishment of a national observatory for the prevention and eradiction of genocide, war crimes and other crimes against humanity, erection of a national monument in memory of all victims of genocide, war crimes and other crimes against humanity, bearing the words «NEVER AGAIN», institution of a national day of remembrance for victims of genocide, war crimes and other crimes against humanity, and taking of measures that would facilitate the identification of mass graves and ensure a dignified burial for the victims. Principles and measures in the area of justice were to include requesting the UN Security Council of an International Judicial Commission of Inquiry, and requesting the establishment by the UN Security Council of an international criminal tribunal. The political principles and measures have not been fulfilled and require local political will for implementation.

As a response to the principles and measures in the area of justice, in 2004 UN sent a mission to Burundi to assess "the advisability and feasibility of establishing an international judicial commission of inquiry for Burundi".[142] The final report, published in March 2005, is known as Kalomoh report[143]. In short, it criticised the adopted plan for the national TRC and suggested a combined version of the national TRC and the international judicial commission of inquiry, where out of 5 commissioners three would be international. The report also suggested establishing a Special Chamber within the Burundian court system (section 61) as opposed to the international tribunal located outside the country, or Special Court that is not part of the national legal system, with mixed composition of judges and an international prosecutor (section 65), criticizing highly the independence and capacity of the national legal system in Burundi (section 52). The Kalomoh report suggestions were formulated in the SC Resolution1606 (20 June 2005). As Vandeginste

[141] Arusha Agreement, Protocol I, Chapter II, Article 6
[142] S/2004/72
[143] S/2005/158

notes, both parties understood through the negotiations that the Special Chamber should be replaced by a separate Special Tribunal to avoid the government control[144].

The likelihood that an international criminal tribunal will be set up after such a long time is, in my opinion, close to zero. Would the international interest have been there, would the tribunal have been established at the same time, and maybe even in a combined manner, with the ICTR. Now, however, the work of the ICTR is being finished, with some appeal cases still pending. Another widely spread criticism is that functioning of the international tribunals has considerable costs per person convicted[145]. The third reason is the lack of local political will in Burundi for international interference in matters that can have serious ramifications on the political elite.

Thus as both the political and justice area measures actually require, for successful implementation, a change in the political landscape in Burundi and an enormous shift in the interest of the international community to push for these measures, I will not elaborate more on them in this thesis and suggest that they should be put on hold, until the circumstances are more favorable.

Therefore, I will make a substantive decision to focus the rest of this Chapter on suggestions related to implementation of solutions from Arusha Agreement related to (1) National reconciliation, including promoting cultural principles and measures; and (2) Exclusion from (or access to) public administration services, education, justice, economy and resources and social services.

4.2 Focus on recommendations related to national reconciliation

Arusha Agreement Protocol IV Chapter II regulates political reconstruction in Burundi and mentions national reconciliation programme as one of the measures, besides strengthening

[144] Vandeginste (2010), page 207, footnote 609

[145] For example, according to Pflanz/Telegraph (04.02.2013), the cost for each person ICTR indicted was by 2013 over EUR15 million.

civil society and independent media, reforming the judicial system and promoting the culture of peace and human rights. The first careful step taken by the government of Burundi in 2014, 14 years after signing of Arusha Agreement, was establishing the TRC and appointing Commission members (see Chapter 3 for details).

Secretary-General of the United Nations defines TRC as "a critical mechanism to further peace consolidation, reconciliation and development" with precondition that "the mechanism be fully owned by the population, their representatives and civil society at large"[146]. In addition, UN Security Council emphasises that the established TJ mechanisms must be "credible and consensual"[147] and comply with international standards[148]. Interestingly enough, the lack of promoting "home-grown solutions to the conflict" and overshadowing the peace process are exactly the things that PRIO criticises the international and regional actors in Burundi's case for[149]. To encourage the international community to set demands, Taylor states explicitly that insisting that the law for TRC guarantees independence, impartiality, and popular participation is not the same as breaching Burundi's national sovereignty, but rather a way to insist on respect for basic democratic principles and rights[150].

The Secretary-General of BNUB, while expressing concern that the TRC Commission establishment has been tainted with boycotts and not having full support of all relevant stakeholders, cautions that a "faulty transitional justice process is more likely to harm than heal" as it reopens wounds instead of creating an opportunity for building a common future[151]. So UN cannot be, in 2014 and 2015, be accused of not criticizing the Government of Burundi, yet their criticism should also have motivating consequences, should the result not meet the international standards and fulfill expectations.

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[146] S/2014/550, paragraph 62, page 14
[147] S/RES/2137 (2014), paragraph 15, page 4
[148] UN Burundi Joint Transition Plan 2014, page 6, paragraph 39
[149] Falch/PRIO (2008), page 4
[150] Taylor (2013/B), page 7
[151] S/2015/36, paragraph 67, page 15

Expectations related to TJ can be measured by the indicators established in the UN Burundi Joint Transition Plan**:**

- Establishment of a truth and reconciliation commission in line with the 2009 national consultations, the work of the technical committee of 2011, international standards and applicable legal instruments;
- Establishment of a special tribunal in line with the 2009 national consultations, the work of the technical committee of 2011, international standards and applicable legal instruments;
- Existence of a follow-up mechanism for the implementation of recommendations of a truth and reconciliation commission;
- Increasing ability of the political leadership to bring about reconciliation between the victims and perpetrators of past crimes;
- Increasing level of satisfaction with the transitional justice process;
- Increasing percentage of the population believing that reconciliation has been achieved. [152]

The mandate of TRC was described in Chapter 3. This has also been criticised. For example, UN Peacebuilding Commission expressed the overall concern about the TRC Commission was that the focus would be on "forgiveness at the expense of constructing memory and fighting impunity".[153] Taylor suggested clearly a considerable reassessment of TRC's mandate and adoption of a localised approach, not necessarily tested elsewhere[154].

Realistically, the mandate will not be changed. What still can be changed is how much effort will be put into every section of the mandate to follow it through and guarantee a successful process that would be acceptable to the population at large. Hazan's indicators can be of assistance here (below).[155]

Indicators for truth commission:

1. Production of "truth" (what kind of truth will be produced: factual, personal or social/dialogical truth; depends largely on the mandate of TRC)

[152] UN Burundi Joint Transition Plan 2014, page 6, paragraph 39
[153] United Nations Peacebuilding Commission (2014), page 3
[154] Taylor (2013/B), page 458
[155] Hazan (2006), page 29. The following list is copied from that article, the text is parenthesis is a summary of Hazan's explanations on pages 29-47. Very relevant for this thesis are the truth commission indicators and common indicators.

2. Presentation of "truth" (minimalistic vs broad coverage. Truth vs forgiveness)
3. Recommendations for institutional reforms and implementation (whether and to what extent are they implemented)

Common indicators:

4. The therapeutic impact (restoring victims' and survivors' dignity, physical and psychological risks involved in testifying, re-traumatization)
5. The effectiveness of public apologies (insincere, diplomatic tool, who are the real target groups)
6. The effectiveness of reparations (finances available, moral issues with accepting money)
7. The process of building a common narrative (practical activities: opening archives, museums, memorials, re-writing textbooks, etc.; and social reconstruction: re-humanisation, re-ritualisation, etc.; creating a symbolic bonding system for future generations).

4.2.1 Promoting the principles and use of *Bushingantahe* as an accepted and understood source of reconciliation and conflict resolution.

Arusha Agreement Chapter 1 Article 1 (2) refers to *Bushingantahe* as a factor promoting cohesion. Ingelære and Kohlhagen concluded based on an extensive fieldwork that the institution is in fact accepted by both ethnic groups and did not find evidence of ethnic prejudice at local level[156]. They therefore proposed, based on numerous interviews with Burundians, that *Bushingantahe* principles, even though possibly not typical TJ source or mechanism, must be part of the process of dealing with the past and living together again. For example,

> by accepting discourse – talking – as a way of truth telling; by using moral condemnation as a form of accountability; by judges or commissioners being chosen primarily based on their moral authority instead of their legal competence; and by understanding that the sharing of food and drink will be paramount to achieving reconciliation in any aspect of the transitional justice process and in any operationalization of a transitional justice mechanism[157].

Authors also suggested that the globally accepted TJ principles could operate at the macro level of Burundian society. The UNDP introduces *Bashingantahe* as a peaceful resolution

[156] Ingelære and Kohlhagen (2012), page 51
[157] Ingelære and Kohlhagen (2012), page 58

to land and family disputes via mediation and reconciliation, promoting social cohesion and peaceful conflict resolution[158].

4.2.2 Truth-telling experiences from other countries

As the TRC functioning is still at the very beginning, experiences from other countries should be learned from and taken into consideration by those who plan the reconciliation strategy for Burundi.

When describing the work of TRC in Democratic Republic of Congo, Davis notes that despite the TRC's mandate being truth-seeking and reconciliation, the fact that the executive committee represented the interests of the belligerent parties and that the public at large was not involved, undermined TRC's credibility and prevented the commission from contributing to truth-seeking.[159]

Hansen describes the truth-telling in Kenya as a process captured by the elite, who gained power via peace agreement, and who had "no real commitment at the level of the political leadership to establish a credible truth-seeking process"[160]. He adds that the TRC (TJRC in Kenya) was under-funded, the public was not properly involved nor informed, for example according to one survey ca 23% of the victims never heard of the commission, thus a strong and independent truth commission never realised in practice. Hansen's concluded that "manipulation of history and ethnicity has proven a central method for politicians to mobilise support, a strong and independent TJRC is likely to have been seen as a danger since it could have helped overcome ethnic myths and create a shared national narrative"[161].

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[158] UNDP (2013), page 104. The report also informs that the decades of civil war in Burundi resulted in ca 850000 people being displaced, their land overtaken by opportunists. On their return, their land rights are not secured, plus current legislation does not recognise women and children as beneficiaries to inheritance and over 70% of all disputes in Burundi's courts concern land-related cases (Pages 22-23).
[159] Davis (2013), page 299
[160] Hansen (2013), page 314
[161] Hansen (2013), pages 314-316

Taylor uses the South African truth-seeking process where the limited participation of significant groups, for example military and white population, limited investigation of those in power, as a warning for Burundi where the local truths are expected to be uncovered, and those holding power can simply refuse to participate, should it be voluntary[162]. He also mentions that Burundians can fear preferential treatment to certain regions in the country as the mandate is enormous many communities have been affected[163].

Ngoga has written that the important contribution with the establishment of ICTR was that it became a legal, not only political, acknowledgement that genocide happened and this fact has become internationally accepted. The guilty verdicts have promoted political stability as genocide suspects were removed from the politics and that helped limit the culture of impunity[164]. Lemarchand demonstrates how Rwanda experience can also be interpreted in different ways as, from one side, Gacaca trials were a unique way towards TJ while, on the other, unifying official memory and creating a new ethnicity Banyarwanda instead of the Hutu and the Tutsi seems to be creating manipulated, enforced and thwarted memories[165].

When analyzing those lessons, and comparing them with the expectations of Burundians from the National Consultations, it seems very possible that the choices of the ruling party for TRC today are following the examples, and failures, from cases presented above, and will fail to fulfill the expectations. Without local political will, it is difficult to change the course, unless the international community will start using their leverage consistently (see also recommendation 3 under section 4.3.3).

Another way to use the visual interest of the ruling party to start the TJ process would be to use that momentum to accomplish something that would benefit the society in a long-run. Here I will make a reference to section 4.4. (IT solutions, outreach, information).

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[162] Taylor (2013/A) page 460
[163] Taylor (2013/A), page 461
[164] Ngoga (2009), page 329
[165] Lemarchand (2009). Detailed discussion at pages 66 and 69-73

4.3 Focus on recommendations related to exclusion from education, justice and resources.

Economic development and employment have a crucial role in peacebuilding and recovery and "increased access to justice through legal aid and rights awareness can also protect the interests of small-scale landholders, traders and merchants from elite predation"[166].

However, as demonstrated in Chapter 1, the statistics for the socio-economic realities for Burundi have not improved during the 15 years since the signing of Arusha Agreement. For the first, lack of considerable private sector as employment alternative turns public sector into main employer to the population. Exclusion from the employment market and services due to lack of connections to the ruling party or not preferred ethnic group constitutes a serious social problem[167].

Population's access to information is very limited. It starts with the fact that almost half of those enrolled to primary school do not graduate and only 28% of those who could enroll to secondary schools[168]. Human rights related literature, education and knowledge, as well as relevant information online, due to extremely limited access to computers, electricity and internet, are simply not available and this makes the majority of population easy to manipulate.

Population's access to legal aid and fair trials is limited. Again, it starts with being aware of one's rights. Yet, the problems run deeper because homes, documents and photos could have been burnt, witnesses could have been killed or intimidated and after having to flee to safer areas, often at multiple occasions, has caused the evidence held by ordinary people

[166] S2011/634, paragraph 54
[167] BTI (2014): "[...] the ruling party gained almost unchallenged control over all state administration after the election boycott in 2010. Public procurement and employment in the public sector have become increasingly politicized [...]. Proximity to the government is generally prioritized over criteria of competence and merit. This is especially frustrating for young educated Tutsi who feel sidelined due to the wrong party affiliation", pages 32-33.
[168] UNDP (2014)

simply being lost. In addition, lawyers who could provide legal aid to victims of state abuse are also subjects to intimidations and harassment.

4.3.1 Recommendation 1: following up the Transition Plan Burundi 2014, Priority area 5: social and economic development

The benchmark established in the Transition Plan is "improving living standards of the population, delivery of basic services to the most vulnerable and conditions for economic recovery" [169].

This area is covered by development programmes in the framework of United Nations Development Assistance Framework (UNDAF). Main donors and partners for both priority areas are Belgium, France, the Netherlands, Switzerland, USA, EU and the African Union[170].

4.3.2 Recommendation 2: setting focus on development programmes in Burundi through bilateral help (example Norway)

The Norwegian Government has concluded a white paper on human rights in Norway's foreign and development policy, called "Opportunities for All: Human Rights in Norway's Foreign Policy and Development Cooperation", placing commitment to human rights to the heart of Norway's foreign and development policy[171]. The Norwegian Ministry of Foreign Affairs (MFA) enlisted priorities are, among others:

> [...] high priority to education in its development policy, with a particular focus on girls, children with disabilities, the poorest children, and children in crisis and conflicts[;] [...]
> setting clear requirements for the recipients of Norwegian aid as regards their willingness to promote human rights, democracy and the rule of law, and making it clear that serious violations of human rights or an unwillingness to comply with human rights obligations will have consequences for further cooperation; [...]

[169] UN Burundi Joint Transition Plan 2014, page 12, paragraph 78. Indicators are listed in paragraph 79.
[170] UN Burundi Joint Transition Plan 2014, page 23, 26-27, annex 2
[171] MFA (2014-2015)

strengthening efforts to protect human rights defenders and promoting a strong and independent civil society;
drawing up a strategy for the promotion of freedom of expression and independent media in foreign policy and development cooperation[172].

These priorities match in fact exactly the exclusion solutions' requirements from Arusha Agreement. MFA has identified the target countries for bilateral support and unfortunately Burundi is not on that list, differently from Tanzania, South Sudan and Uganda. In 2013, Norway sent NOK 80,9 million to Burundi[173]. Burundi, on the other hand, could and should, in my opinion, be on the priority list based on the very low results on all possible indexes, yet as a very small land where ca 10 million people live compactly on 28 000 km², properly targeted bilateral as well as multilateral aid can produce effective results and noticeable change in a relatively short period.

4.3.3 Recommendation 3: making ODA conditional: human rights based approach (HRBA) and result-based management (RBM)

Due to Burundi's dependency on ODA, international community has considerable leverage which needs to be used consistently and strictly. "Naming and shaming" and pointing at failures to comply with international standards and/or fulfill made promised and commitments should be openly addressed, and if necessary punished to motivate.

As an example, BTI describes in its report how the donor community granted the Burundian government $2.5 billion in 2012, which was nearly twice as much as the ruling elite expected, although the concerns about the human rights abuses by security organs and the intimidation and harassment of opposition members were not answered nor seriously addressed[174]. Seger's example how he offered to the Minister of Foreign Affairs in Burundi, after a successful elections, to focus cooperation with Peace Building Commission on socio-economic development and attracting private investments to

[172] MFA press-release (12.12.2014)
[173] NORAD (2014), Annual report 2014, page 108. The amount has declined back to the level in 2004-2006, while being almost double in 2009 (NOK) 158million.
[174] BTI (2014), page 36

Burundi, to which the Minister answered that "his Government has not yet taken a decision on the future cooperation with the PBC, but would certainly appreciate the elaboration of a concept note", shows that today the ruling party in Burundi has lost clear understanding who makes the rules[175].

Another way to motivate the governments for cooperation was proposed by Arjun Sengupta who suggested a "human-rights based approach" to the World Bank and IMF, meaning that they should make their poverty reduction programmes open-ended, thus funds being available only if human rights standards have been made part of strategies[176]. As I have mentioned before, Burundi's PRSPII included those expected standards, so we should take one step further and include result-based management (RBM) model to measure results and withhold next payments should the results and reporting not meet the expected level and criteria[177].

In addition, government members and elite should be subject to tax reviews to establish the sources of their increasing wealth and to find ways to gap the growing inequalities. This is connected to the amount of money that is provided in cash-grants and the corruption level established by reliable indexes in Chapter 1. The unaltered socio-economic statistics suggest that the ODA in today's format does not benefit the ordinary people in Burundi.

4.3.4 Recommendation 4: focusing on economic reforms

Development economist Jeffrey Sachs has identified the "Big Five" development interventions:

1. Boosting agricultural performance
2. Improving basic health
3. Investments in education
4. Improving power, technology and communications

[175] Seger/ United Nations Peacebuilding Commission (29.12. 2014), Page 7
[176] E/CN.4/2005/49 (11.02.2005), pages 12-14
[177] RBM is used, for example, by MFA for bilateral aid to measure and control that the goals sets are actually met. Payments for next period are dependent on goals' fulfillment. Model is used also by UNDP in its Europe and CIS projects (UNDP 2015)

5. Access to clean drinking water and proper sanitation[178]

His idea was to set up the so-called "millenium villages" where such conditions were met[179]. The cost for setting up infrastructure for one village of 5000 people costs approximately $350,000 and people can learn to support themselves sustainably, thus decreasing their poverty over the period of time. Maathai says that, for example, in Kenya, to provide the Big Five to all those who need them would cost about 1,5billion US dollars per year[180]. As Burundi is much smaller, the costs there would be lower.

4.3.5 Recommendation 5: activating the "poor vote"

Activating the "poor vote" is a long-term project. Banik describes how the poor and the vulnerable groups, for example women, in developing countries often do not participate in political processes and how much influence they could have if they could or knew how to vote collectively to emphasise their needs and hold the leaders accountable[181]. The focus of this recommendation must be on education programmes. This would, in a long-run, initiate the demands for democratic processes and accountability in the country. As a result TJ process might become realistic again after the political scene in Burundi has changed.

Clarke also assessed that the main elements missing in Sub-Saharan Africa when compared to Arab Spring and mobilizing opposition are literacy and access to technology as those make it possible to read relevant information, express own views, create strategies and mobilise global interest[182].

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[178] Sachs (2005)
[179] Millenium Villages project. Burundi has zero villages, even though the statistics imply for a need for many.
[180] Maathai (2009), page 75
[181] Banik (2010), pages 111-112
[182] Clark (2012), pages 73-74

4.4 Other recommendations

4.4.1 Recommendation 6: creating a documentation center

Using the current Government's willingness to start the TJ process via TRC, international pressure is necessary to get the government to really dedicate itself to creating common history. My suggestion is the creation of a documentation center. As described above, the atrocities have taken place over five decades, the amounts is victims is big, the number of refugees and internally displaced people is close to a million. A lot of evidence owned by people has already been lost. The generation of adults who experienced the genocides and related atrocities is getting old and dying, literally taking their witness testimonies with them to grave. Burundi has an oral tradition, related to low literacy rate and talking as a form of socializing. Should one day interest to investigate the committed atrocities arise, will gathering all the evidence be problematic.

The goal would be to, firstly, cooperate with the local civil society organisations that might already have started gathering such documentation and witness statements and systematically collect and, most importantly, preserve the documentation available, preferably in servers outside Burundi. The second aim should be to approach as many people as possible, in different regions and from different ethnic groups, to get hold on documentation they might have, but in the case of Burundi, to mainly record as many witness statements with details and names as possible. The next step would be insert the collected data into a tailored database, digitalise, analyse and tag information available, creating patterns to re-create possible events and eliminating false statements as compared to majority statements and probabilities. Such statistical data would help identify killed and missing persons, joint graves, perpetrators in the military, local authorities as well as

among guerillas, and give a common understanding with guaranteed confidentiality to witnesses as to what has happened in Burundi throughout the last 50 years[183].

Even though there amount of victims, relatives and witnesses among the population in Burundi is huge, there are some groups that could provide more information than others, when approached. For example, the President and other leading politicians now and then, National Forces (army, police), local authorities, school headmasters of that time, church leaders, SOS villages' leaders of that time, etc.. The availability of written official orders is, of course, not certain.

Technological possibilities could also be used to make attendance for truth-telling more available to ordinary Burundians. For example, let witnesses give testimonies via media without having to travel great distances, as physical participation might be difficult to many due to limited infrastructure as well as necessity to work for living near home daily. Additionally, technology must be used to inform the population about TRC, its mandate, related processes and hearings, and, most importantly, developments and results.

4.4.2 Recommendation 7: taking a regional approach

Burundi is part of the Great Lakes region and instability in one country definitely affects the others. For different reasons mentioned above, Burundi has not been able to attract enough international attention to its situation, something that cannot be said about Burundi's closest neighbors Rwanda and Tanzania. For example, in 2008, Rwanda and Tanzania were selected with 7 other countries to become pilot countries for the UN reform known as "Delivering as One" or "One UN"[184]. Burundi should be added to this pilot as soon as possible.

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[183] Similar methodology has been developed by the Norwegian Helsinki Committee (NHC) for North Caucasus to collect and preserve delicate information about international criminal law as well as international human rights and humanitarian law violations during the armed conflicts in 1990s and 2000s. Of course, the methodology needs to be accommodated to the local context of the region in question. For more information, see NHC's Annual Report 2014.

[184] More information from http://www.rw.one.un.org/who-we-are The countries selected: Albania, Cape Verde, Mozambique, Pakistan, Rwanda, Tanzania, Uruguay, and Viet Nam

My suggestion thus is that what is done with Rwanda and Tanzania should naturally, almost automatically, include Burundi as the leaders there are currently unable and unwilling to think in Burundi's best interest per today themselves.

4.4.3 Recommendation 8: preventing re-occurrence of atrocities

In 2014, BTI wrote: "A further escalation of the political crisis could effectively mean a relapse into an authoritarian and exclusionary political system similar to the prewar configuration and seriously endanger the hard-won peace. This looming negative scenario ought to be actively addressed by Burundi's sub-regional neighbors and the wider international community"[185].

The political tensions from 2014 and 2015 have now activated the international community a little, yet specific actions are not being taken yet, even though the methodology and know-how has been developed earlier and is available. For example, UN Secretary-General report A/68/947-S/2014/449 from 11 July 2014 suggests 3 methods how the international community could contribute to preventing states from falling into cycles of violence and atrocities: (1) encouragement; (2) capacity building; (3) protection assistance.

UN should take its peacekeeping obligation seriously and take preventive measures before the upcoming elections in Burundi in June 2015 to avoid next internal armed conflict. Solution suggestion would thus be to allocate resources in the light of R2P's pillar II assistance. And, in the case of Burundi, if the violator is the state itself, the focus should be shifted to supporting civil society and independent media, keeping international attention focused on Burundi and punishing and isolating the perpetrators[186].

Another recommendation could be based on Rwanda's experience with peace-building, attempting to create lasting peace by transforming currently interest-related nation-wide

[185] BTI (2014), pages 38-39
[186] A/68/947-S/2014/449, paragraph 76, page 19

peacebuilding projects into bottom-up local initiatives that understand and, therefore, could benefit people in local communities[187].

[187] Buckley-Zistel (2009), pages 140-142

5 Conclusion

In this chapter I will conclude, in the form of answering the research question, what have been the successes and shortcomings of Arusha Agreement implementation so far and how such implementation has impacted the TJ process and population in general. I will also summarise my recommendations related to TJ, reconciliation and truth-telling as well as development in general.

Burundi has not been able to make considerable progress in development nor TJ since signing of Arusha Agreement in 2000. Factors that seem to contribute most are local political elite's subjective preferences, interests and policies and the limited international community interest and engagement in a very small land-locked country lacking significant natural resources. I have demonstrated how Burundi's development as well as political stability influence the Great Lakes region as a whole and how the reforms and programmes driven in neighboring countries should be given a regional scope to almost automatically include and, as a result, benefit Burundi.

Based on my analysis in chapter 3, I can conclude that the successes of Arusha Agreement implementation are the end of the civil war in 2005, with last guerilla groups terminating their activities in 2008, the maintenance of negative peace, the power-sharing arrangements, the organizing of two sets of relatively democratic elections with the third round taking place in May 2015, and the adoption of a new Constitution in 2005 which includes many important references to international human rights law treaties that will have more practical significance once the political climate has improved and the political elite replaced in the country.

The shortcoming of Arusha Agreement implementation are related to the failure of the political elite in Burundi to address the root causes of the genocides and related atrocities throughout the last 50 years, namely, as established in Arusha Agreement Protocol I Article 4, that the conflict is fundamentally political with extremely important ethnic dimensions

and the it stems from a struggle by the political class to accede to and/or remain in power, as the political power in Burundi equals economic power and access to resources. By failing to address the solutions from Arusha Agreement related to national reconciliation and creation of common understanding of the history, exclusion from education, justice, social services, employment and development, and making strategic choices for economic reforms to free the country, at least in long-term perspective, from dependency on ODA, will positive peace not only remain unattainable in Burundi, but the country is in risk of falling back into renewed cycles of violence.

TJ in Burundi has almost not started at the time of writing this thesis, 15 years after signing of Arusha Agreement. The ruling party is a former guerilla group whose members of that time actively participated in the civil war in the 1990s and the first part of the 2000s and allegedly committed serious war crimes and crimes against humanity. The lack of vetting clauses in Arusha Agreement allowed them to come to power via peace-agreement in 2005, provide temporary immunities to those related to the ruling party and other armed groups and basically maneuvering the take control of all three branches of the government to dominate the direction that TJ in Burundi is taking.

As demonstrated in Chapter 3, scholars as well as international community have acknowledged widely now that the setting up of TRC as an initial TJ mechanism in Burundi is also a political maneuver, that the TRC as established today is not independent, that the truth-telling will be done at the expense of accountability and justice and by the rules acceptable and favorable to the ruling party, and will not, as a result, serve the needs, expectations and interests of the population at large nor fulfill the goals related to reconciliation.

Chapter 4 was dedicated to the recommendations for possible solutions how to make TJ process meaningful for the population, following largely the framework provided for in Arusha Agreement. In the beginning of the chapter, I took a substantive decision to not discuss judicial and political solutions as they require local political will and engagement that, due to conflict of interests, is not present today.

Instead, I focused on recommendations related to national reconciliation, looking at truth-telling as a most realistic option at hand. I also combined the solution with expectations of Burundians expressed at National Consultations in 2009 and 2010 and how locals view *Bushingantahe* as a reliable and understandable traditional non-judicial conflict resolution method until today. As access to resources has been the root cause for the conflict for decades, solutions related to development, economic reforms, education and fighting poverty were naturally included. As Burundi is a compact country, a coordinated and consistent effort via bilateral and multilateral aid can produce relatively fast and measurable results and effects in that country, and would, in addition, definitely help to prevent re-occurrence of atrocities.

Another recommendation that can have a significant impact on reconciliation and would promote creating common understanding and history for Burundi would be creating a documentation center where evidence and witness statements would be digitalised, analysed, systemised and preserved safely outside the country until the political engagement will be present in Burundi to focus on the interests of the population. Burundi has an oral tradition, so a lot of information is in witness statements. However, witnesses grow old and as change might take a while, it is vital to gather the evidence as soon as possible.

The last recommendation was related to R2P and the obligation of the international community to take preventive action to atrocities. I described how the political tensions in Burundi are rising in connection to elections in 2015 and how the political elite will do anything to stay in power. I also demonstrated how international community has reacted to the developments and cautioned the current government to respect international human rights, but how empty warnings do not motivate the ruling party any more, and how more specific sanction-related activities and reforms might be relevant at this stage.

I would like to finish with a positive note and say that despite the rather limited implementation of Arusha Agreement per today, the understanding formalised in that document is still valid. The fact that the ruling party is currently focused on its subjective interests does not mean that positive peace and development in Burundi are impossible. On

the contrary, they are attainable relatively fast due to the size of the country. What is required is for international community to start making ODA conditional and find ways of supporting reconstruction and education differently from the practice today. ODA must directly benefit the ordinary Burundians, not be transferred as cash grants to corrupt authorities. However, before that, international community must tune in to the pre-election as well as post-election tensions in Burundi to take action before the country relapses into yet another civil war.

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